CURRENT DECISIONS

ADMIRALTY—STATUTE OF LIMITATIONS—LOSS OF ACTION FOR WRONGFUL DEATH AFTER RELIANCE UPON UNCONSTITUTIONAL STATUTE.—On May 20, 1918, the plaintiff's intestate was killed while engaged in work on a barge in New York harbor. The plaintiff received compensation under the New York Workmen's Compensation Law until October 15th, 1920, when further payment was denied on the ground that the United States Supreme Court had held in the case of *Knickerbocker Ice Co. v. Stewart* (1920) 253 U. S. 149, 40 Sup. Ct. 438, that a person in the position of the plaintiff's intestate was not entitled to the benefits of state workmen's compensation acts. The plaintiff then sued at common law for wrongful death. The defendant pleaded the Statute of Limitations. *Held,* that the plaintiff could not recover. *Robinson v. Robins Dry Dock & Repair Co.* (Feb. 2, 1923) N. Y. App. Div. 2d Dept.

The Knickerbocker Ice Co. case, which declared unconstitutional the attempt of Congress to amend the Judiciary Act so as to give employees injured on state waters the benefit of rights and remedies under the workmen's compensation acts of the several states, necessarily terminated the compensation award. (1920) 29 YALE LAW JOURNAL, 925. Because the plaintiff relied on this Act of Congress her common-law and admiralty remedies were barred by the Statute of Limitations. Although the result is harsh, it seems that the only redress is by legislative action. For discussions of the jurisdictional question, see COMMENTS (1917) 27 YALE LAW JOURNAL, 255; (1922) 31 *ibid.* 561; (1923) 32 *ibid.* 283. On the effect of holding a statute unconstitutional, see (1919) 28 *ibid.* 592.

CONSTITUTIONAL LAW—NATURALIZATION—HINDU EXCLUDED FROM CITIZENSHIP.—A high caste Hindu of full Indian blood was granted a certificate of citizenship by a District Court. The United States sought to cancel the certificate. An appeal was taken and the Circuit Court of Appeals certified the question. *Held,* that a Hindu was not entitled to citizenship. *United States v. Bhagat Singh Thind* (February 19, 1923) U. S. Sup. Ct., Oct. Term, 1922, No. 202.

"Free white persons" within the meaning of section 2169 of the Revised Statutes (Act of June 29, 1906, 34 Stat. at L. 596) was construed to mean Caucasians in the popular and not in the ethnological sense. The instant case overrules a previous decision. *In re Mohan Singh* (1919, S. D. Calif.) 257 Fed. 209; see (1923) 32 YALE LAW JOURNAL, 510.

CONSTITUTIONAL LAW—TRANSPORTATION ACT, 1920—APPORTIONMENT OF JOINT RATES.—Invoking the Transportation Act, 1920, Act of Feb. 28, 1920, ch. 91, sec. 418 (41 Stat. at L. 456, 486), the railroads of New England obtained an order from the Interstate Commerce Commission increasing by 15% their shares in joint through rates. *New England Divisions* (1922) 66 I. C. C. 196. The rates had previously been divided by express contract. Suit was then brought by the railroads adversely affected to enjoin the enforcement of the order as unconstitutional under the Fifth Amendment. *Held,* that the order was constitutional. *The New England Divisions Case* (Feb. 19, 1923) U. S. Sup. Ct., Oct. Term, 1922, No. 646.

Provided a carrier receives a fair return on a fair valuation, it is thought that there is no taking without due process of law no matter how indirect the process of adjustment. This permission to collect more than a fair return with a provision that the surplus be remitted to the government or turned over to other railroads is not confiscation. Nor, as shown by the instant case, is the abrogation of contracts for the apportionment of joint rates an impairment of the obligation of contracts. Bunn, *The Recapture of Earnings Provisions of the Transportation Act* (1923) 32 YALE LAW JOURNAL, 213.

CRIMINAL LAW—CONSPIRACY TO COMMIT CRIMINAL SYNDICALISM—SEARCHES AND SEIZURES.—The defendant was arrested on a charge of violating a statute directed against criminal syndicalism. His lodgings were searched without warrant, and papers found therein were seized. *Held,* that such evidence was admissible though unlawfully obtained. *State v. Tonn* (1923, Iowa) 191 N. W. 530.

Until the instant case the federal rule permitting return on motion of illegally obtained evidence has prevailed in Iowa. The reversal, induced apparently by a "law-writer's" views, was not unopposed. For discussions of the subject, see Wigmore, *Using Evidence Obtained by Illegal Search and Seizure* (1922) 8 A. B. A. JOUR. 479; COMMENTS (1921) 31 YALE LAW JOURNAL, 518; COMMENTS (1923) 32 *ibid.* 490.

DAMAGES—INTEREST ON CLAIMS AGAINST THE UNITED STATES.—The United States requisitioned certain land under section 10 of the Lever Act. In an action to recover "just compensation," the owner demanded the value of the land, plus interest from the time the United States took possession. *Held,* that he could recover. *Seaboard Air Line Ry. v. United States* (March 5, 1923) U. S. Sup. Ct., Oct. Term, 1922, No. 407.

In the absence of a statute or an express stipulation the United States cannot be subjected to the payment of interest on claims against it. *United States v. North American Transportation and Trading Co.* (1920) 253 U. S. 330, 40 Sup. Ct. 518. But where a statute provides for "just compensation" for the appropriation of property, allowing interest is a fair method of ascertaining it. *United States v. Rogers* (1921) 255 U. S. 163, 41 Sup. Ct. 281.

HUSBAND AND WIFE—ANTE-NUPTIAL AGREEMENT NOT TO SUPPORT.—As a defense to an action for support, the husband claimed that he had married the plaintiff while *enceinte,* her father having agreed to relieve him of responsibility for her support. The plaintiff had assented to this agreement. *Held,* that the defendant must contribute to the support of the wife and child. *Smith v. Smith* (1922, Ga.) 115 S. E. 73.

Such agreements are generally invalid for reasons of policy. Despite the almost complete emancipation of the married woman and the development of her sole and separate estate, the courts rightly cling to the reason that the public is interested in preventing the wife from becoming a public charge. *Harding v. Harding* (1922, N. Y.) 203 App. Div. 721, 722; see COMMENTS (1923) 32 YALE LAW JOURNAL, 478, notes 32, 22, and 11.

HUSBAND AND WIFE—LIABILITY OF COMMUNITY PROPERTY.—A civil action was brought against the husband and wife to compel reconveyance of certain community property fraudulently obtained by them, and a criminal action was instituted against the husband in connection with the same transaction. The plaintiff defended both these actions and then sued husband and wife for the value of the legal services rendered. *Held,* that the claim for such services was a debt of the community for which community property was liable. *Vanderveer v. Hillman et ux.* (1923, Wash.) 211 Pac. 722.

In Washington all community property is liable for a debt incurred by the husband for the benefit of the community. *Horton et ux. v. Donohoe-Kelly Banking Co.* (1896) 15 Wash. 399, 46 Pac. 409; *Woste v. Rugge* (1912) 68 Wash. 90, 122 Pac. 988. But community personalty only is liable for the husband's own individual debt. *Gund v. Parke* (1896) 15 Wash. 393, 46 Pac. 408. Consequently a plaintiff who wishes to establish the debt as that of the community so as to render the realty liable may and usually does join the wife as a co-defendant. *McDonough v. Craig* (1894) 10 Wash, 239, 38 Pac. 1034; see (1923) 32 YALE LAW JOURNAL, 405, where this rule is stated too loosely. Otherwise the judgment

is not conclusive as to her and she may intervene and enjoin the sale of the realty. *Woste v. Rugge, supra; Gund v. Parke, supra.* The instant case is an example of such joinder. For a fuller discussion, see Evans, *Community Obligations* (1922) 10 CALIF. L. REV. 128-129.

PROPERTY—DETERMINATION OF BOUNDARY BY BANK OF A RIVER.—By treaty in 1819, the boundary between the Spanish possessions and the United States was described as "following the course of the Rio Roxo (Red river) westward, etc." The treaty provided further that all islands in the river should belong to the United States, but that the use of the waters and the navigation to the sea should be common to both countries. Almost uniformly the sand bed of the river is separated from the grassy upland by a clearly defined "cut" bank. When the water is in substantial volume, it washes both banks and is confined thereby, but except for a small part of the year the water is low and most of the bed is dry. The line between Texas and Oklahoma is now to be determined by this treaty, the question having become important because of the discovery of oil beneath the river bed. In the case of *Oklahoma v. Texas* (1921) 256 U. S. 70, 41 Sup. Ct. 420, the provision was construed to read "following the course of the southern bank." *Held,* (one justice *dissenting*) that the boundary intended is on and along the "cut" bank and not at the low water mark. *Oklahoma v. Texas* (Jan. 15, 1923), U. S. Sup. Ct., Oct. Term, 1922, No. 18.

The dissent points out that this decision asserts that the Spanish government intended a boundary by which a narrow strip of foreign territory was interpolated between its citizens and the waters essential for their welfare. The opinion rests upon the construction of the word "bank," itself interpreted into the original treaty, and seems a triumph of technical logic.

TRADE-MARKS AND TRADE NAMES—USE OF TRADE-MARKS ON GENUINE GOODS.—The plaintiff bought the American business of a French face-powder manufacturer, imported its product in bulk, repacked it, and sold it under the trade-marks of the French company registered in the United States. The defendant imported the same powder in the original packages and retailed it in competition with the plaintiff. The plaintiff sought to restrain such sale within the United States. *Held,* that the injunction would be granted. *Bourjois & Co. v. Katzel* (Jan. 29, 1923) U. S. Sup. Ct., October Term, 1922, No. 190.

A trade-mark is designed to denote the origin and genuineness of goods, and serves the double purpose of protecting the owner in his business and of safeguarding the public from deception. There is a conflict as to which is the primary purpose. (1922) 35 HARV. L. REV. 624; NOTE and COMMENT (1922) 7 CORN. L. QUART. 373; *Bourjois & Co. v. Katzel* (1920, S. D. N. Y.) 274 Fed. 856. The instant case emphasizes the former purpose. See (1923) 68 N. Y. L. JOUR. 1726.

WILLS—REVOCATION—IMPLIED FROM DIVORCE WITH PROPERTY SETTLEMENT.—In 1903 the deceased executed a will bequeathing all his property to his wife. In 1916 a divorce with alimony was granted, which was followed by an agreement as to full settlement of the alimony. *Held,* (two judges *dissenting*) that the divorce and property settlement revoked the previously executed will. *In re Bartlett's Estate* (1922, N. D.) 190 N. W. 869.

Practically all authorities agree that divorce alone is not such a change of condition as at law will amount to an implied revocation. *In re Jones Estate* (1905) 211 Pa. 364, 60 Atl. 915; *Card v. Alexander* (1881) 48 Conn. 492. Otherwise if coupled with a property settlement by the parties. *In re Hall's Estate* (1909) 106 Minn. 502, 119 N. W. 219; *In re Battis* (1910) 143 Wisc. 234, 126 N. W. 9; *Wirth v. Wirth* (1907) 149 Mich. 687, 113 N. W. 306; *contra: In re Brown's Estate* (1908) 139 Iowa 219, 117 N. W. 260; *Succession of Cunningham* (1918) 142 La. 701, 77 So. 506.